IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2761 OF 2004

Rajaram Sitaram Malkar .. Petitioner

V/s

M/s U.S. Vitamin (India) Ltd. .. Respondent

Mr.N.M. Ganguli with Ms.Kusum G. Poojari for the petitioner.

Mr.R.V. Paranjpe for the respondent.

CORAM : F.I. REBELLO, J.

DATE : 14TH OCTOBER 2004

P.C. :

1. Rule. Heard forthwith.

2. The petitioner workman challenges the Award dated 24th June 2003 passed by the learned Presiding Officer, Labour Court. The learned Presiding Officer held that the termination of the services of the workman was illegal and hence the workman was entitled for reinstatement. The learned Presiding Officer, however, held that the Govandi Plant had been closed and, in these circumstances, held as under:-

> "That is why even though the second party is entitled for reinstatement, that is not possible in the present set of facts particularly closure of the company, that is Govandi Plant, but he is

> entitled for full back wages from 22.4.1990 to 29.2.2000 along with notice pay. Second party said that his last drawn salary was Rs.2350/-. Company says that his law drawn salary was Rs.2308/- per month. So I direct the first party company to verify the record and pay full back wages from 22.4.1990 to 29.2.2000 retrenched compensation and notice pay. I answer Issue No.3 accordingly."

While announcing the Award, the learned Presiding Officer further observed as under:-

> "In the peculiar circumstances he is entitled for reinstatement but he is entitled for full back wages from 25.4.1990 to 29.2.2000 on the basis of last drawn wages as per the record of the company retrenchment compensation and notice pay."

3. At the hearing of the petition, on behalf of the petitioner, his learned counsel firstly contended that subsequent to the termination of the petitioner and closure of the establishment, the company had offered Voluntary Retirement Scheme (VRS). The petitioner, therefore, should also be entitled to the benefits given

to the other workmen under the VRS. Secondly, it is pointed out that there was no material produced to show as to why the workman would not be entitled to full back wages, considering that the learned Presiding Officer while directing payment of back wages restricted it to the last drawn wages as per the record of the company.

4. On behalf of the respondents, their learned counsel contended that considering the Award, it does not show any error apparent on the face of record and, therefore, this Court ought not to interfere with the same and the petition ought to be dismissed.

5. The first question that therefore arises whether the petitioner is entitled to the benefits under the VRS, which the respondent Company had made available to the other workmen. Admittedly, the scheme is not in force. The establishment is already closed. VRS by its very nature is voluntary and ought to be exercised within the time-frame as set out in the scheme. The contention of the petitioner, however, is that considering that his termination is set aside, he would have been in employment on the date of VRS which was in force and, in these circumstances, he also should be given the benefit of VRS. In view of the mandatory nature of the direction sought, it is not possible

either for this Court or the Reference Court to direct the respondent employer to resurrect the scheme which is not in existence. If the scheme is in existence, that would have been another matter. Once the scheme has come to an end by efflux of time for whatever reasons, a direction cannot be issued to the respondent Company to once again float the scheme. Such a scheme cannot be floated also because the establishment itself has been closed. The first contention must, therefore, be rejected.

6. That brings us to the second contention, namely whether the Labour Court was right in restricting the full back wages to last drawn wages. In law, it may be open to the Labour Court to restrict the back wages provided sufficient reason are given which would support exercise of discretion in not granting full back wages. In the instant case, the Labour Court has come to the conclusion that the petitioner workman is entitled to full back wages from 22.4.1990 to 29.2.2000 along with retrenchment compensation and notice pay. The only dispute was as to what were the wages which the petitioner was drawing at the time of his termination, whether it was Rs.2350/- as contended by the workman or Rs.2308/- as contended by the respondent Company. Once having come to the conclusion that the petitioner

workman was entitled to full back wages, in the operative part of the Award it was not open to the Labour Court to restrict the back wages to last drawn wages. This part of the order of the Labour Court discloses error of law apparent on the face of record and is liable to be set aside. The workman would be entitled to full back wages from 25th April 1990 to 29th February 2000 including the benefits of any settlement or wage revision if given by the respondent Company to other workmen during that period as also retrenchment compensation and notice pay based on the wages which the petitioner workman was entitled to at the time of closure on 29th February 2000.

7. In the light of the above, the following order:

(i) Rule is made partly absolute in the following terms:

(ii) Inasmuch as the Award dated 24th June 2003 is partly modified, the petitioner workman would be entitled to full back wages from 25th April 1990 to 29th February 2000 including the benefit of any settlement and/or revision of wages given to other workmen during the said period. The retrenchment compensation and

notice pay will be based on the wages the workman would have drawn on the date of closure, i.e. 29th February 2000.

(iii) It is an admitted position that the wages at the time of termination was Rs.2308/- per month. The employer, in the meantime, has paid to the petitioner workman several amounts. Those amounts would be adjusted against the amount which the petitioner workman would be entitled to. The balance amount will be paid to the petitioner workman within 8 weeks from today.

(iv) The petitioner workman would be entitled to other benefits which can be computed in terms of money if he is entitled to the same in terms of the service conditions.

(F.I. REBELLO J.)